

DIRECTOR OF CENTRAL INTELLIGENCE
Security Committee

INVESTIGATIVE STANDARDS WORKING GROUP

5 August 1980

MEMORANDUM FOR: Chairman

FROM:

[REDACTED]
Acting Chairman
Investigative Standards Working Group

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SUBJECT:

Report of Meeting on Proposed Annex B
to DCID 1/14 - SCI Appeals Procedures

1. A proposed annex to DCID 1/14 to establish guidelines for the development of SCI appeals procedures was approved by the Security Committee early in 1979 (see Attachment 1). The NSA representative non-concurred at that time because of his perception that the establishment of common procedures were neither desirable nor necessary. Before sending the proposal to NFIB, your predecessor requested support from the DCI General Counsel.

2. Early this spring, the Investigative Standards Working Group initiated a review of the proposal at the request of several members (Air Force, Army, Navy and DIA). These DoD members were eager to recommend DCID 1/14 appeals procedures. Otherwise, they would be forced by OSD to operate under DoD Directive 5200.2R. That directive had been published by OSD (specifically, [REDACTED] in December 1979 over the objections of SCI representatives from Army, Navy, Air Force, DIA and NSA. It was onerous to these components primarily because it defined denial or revocation of SCI access as an adverse action and permitted an appellant to go outside the jurisdiction of Senior Intelligence Officers.

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At a protest meeting of DoD members, [] is reported to have promised that references to SCI access will be withdrawn from DoD Directive 5200.2R provided that the SCI community develops its own appeals procedures.

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3. After lengthy deliberation, a task force reported a revised draft to the Working Group for its consideration. On 17 July 1980, the Working Group unanimously approved that draft (see Attachment 2). The DCI/OGC reviewed the draft and found it to be legally deficient in view of rapidly evolving current events. A new draft was then prepared for presentation to the Working Group (see Attachment 3).

4. The Working Group met on 31 July 1980 to discuss the new draft. Messrs. [] from DCI/OGC were present to explain the reasons for changes in the draft and to answer questions from Working Group members. [] from NSA/OGC was also present.

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5. Despite sound legal advice to the contrary, four Working Group members (Air Force, Army, Navy and DIA) oppose paragraph 5C and served notice that they intend to vote against the entire proposal if it remains in the draft. Paragraph 5C provides that the appellant must be given an opportunity to appear personally before the SCI Determination Authority. The DCI/OGC and the NSA/OGC both warned that paragraph 5C is a key provision and that any semblance of "due-process" disappears with its deletion. They further warned that the courts will immediately dictate its inclusion in some form with additional onerous provisions which will be deleterious to the entire SCI Intelligence Community.

6. The DoD Members were not persuaded and continue to adhere to the view that such a provision is unnecessary, overly cumbersome, and completely impractical. After hearing their objections, it was still not entirely clear to me what they were objecting to other than cost and loss of immunity in days gone by. I am told that the DoD members will soon be joined by an OSD representative to the Working Group to form a block of five dissenting votes on paragraph 5C.

7. At the 31 July 1980 meeting, NSA also objected to all references to adjudication policy in the proposed annex. Those references appear in paragraphs 1 and 4 as well as in the title. I have just learned, however, that NSA has tentatively agreed to the changes which appear in red on Attachment 3.

8. All Working Group members were requested to consult with their legal counsels and to meet again on 6 August to discuss the matter further. Meanwhile, each of the DoD members will be contacted to determine whether or not they will accept a footnote to paragraph 5C which would place the burden of travel expenses on the appellant unless he is reinstated.

9. If the DoD bloc continues to oppose paragraph 5C, the vote will likely be eight to five in favor of Annex B. At the close of the meeting, the Air Force representative stated that the DoD members would prefer to follow the procedures of 5200.2R. In my opinion, that would place them in violation of the letter and spirit of DCID 1/14 as persons denied SCI access could then appeal outside the jurisdiction of any DoD Senior Intelligence Officer. The result would be that a DoD Senior Intelligence Officer would be unable to control SCI access. Further, DoD Directive 5200.2R contains a broad-gauged provision which permits the Secretary of Defense to make certain SCI decisions notwithstanding the provisions of 5200.2R or DCID 1/14.

10. I will forward another report to you following the Working Group meeting of 6 August 1980.



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Attachments

cc: Executive Secretary, SECOM

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